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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

NEOFONIE GMBH, a German  
corporation,

Plaintiff,

vs.

ARTISSIMO DESIGNS LLC, a  
Delaware limited liability company,

Defendant.

ARTISSIMO DESIGNS LLC,

Counter-Plaintiff.

vs.

NEOFONIE GMBH

Counter-Defendant.

Case No.: 8:17-cv-00772 CJC  
(JDEx)

DEFENDANT/COUNTER-  
PLAINTIFF'S MOTION *IN*  
*LIMINE* TO EXCLUDE EXPERT  
TESTIMONY OF DR. ALI  
KHOSHGAZARAN, PH.D

Hearing Date: January 14, 2019  
Hearing Time: 3:00pm  
Courtroom: 7C

The Honorable Cormac J. Carney

1 Defendant/Counter-Plaintiff Artissimo Designs LLC (“Artissimo”)  
2 respectfully submits this Motion *in Limine* to Exclude Expert Testimony of  
3 Dr. Ali Khoshgazaran, Ph.D. Artissimo hereby notifies Neofonie that the  
4 hearing on the motion will take place at the pre-trial conference scheduled  
5 for January 14, 2019, at 3:00 p.m. before the Honorable Cormac J. Carney.

6 As explained in Artissimo’s Memorandum of Points and Authorities,  
7 filed contemporaneously herewith, Dr. Khoshgazaran purports to have  
8 formed five opinions about the subject matter of this case, but each of these  
9 opinions either is not reliable or is not helpful to the trier of the fact.

10 **First**, Dr. Khoshgazaran’s opinion that Artissimo “failed to conform  
11 to important principles of Agile software development and MVP launch” is  
12 neither reliable nor helpful to the trier of fact because: (1) Dr.  
13 Khoshgazaran used an unreliable methodology in basing his opinion of  
14 Artissimo’s conduct on an analysis of one out of 46 features required for  
15 the Project; (2) Dr. Khoshgazaran’s testimony as to the “industry standard”  
16 for a minimum viable product (“MVP”) is irrelevant and confusing because  
17 the features of *this* MVP are defined solely by the contract between the  
18 parties; and (3) Dr. Khoshgazaran’s analysis that the *contract* does not  
19 conform to industry standards does not support his conclusion that  
20 *Artissimo* failed to conform to such standards.

21 **Second**, Dr. Khoshgazaran’s opinions as to Neofonie’s use of best  
22 practices and implementation of out-of-the box solutions vs. customization  
23 should be excluded because they are rebuttal opinions and Artissimo is not  
24 pursuing these theories at trial.

25 **Third**, Dr. Khoshgazaran’s opinion that the deficiencies present in  
26 the website were not as severe as Artissimo portrayed should be excluded  
27 because: (1) Dr. Khoshgazaran failed to test the website and therefore  
28 cannot reliably opine as to the severity of the deficiencies; and (2) Dr.

1 Khoshgazaran's opinion is based on weighing the credibility of others'  
 2 opinions and the documentary evidence, which is the province of the jury.  
 3 Moreover, Dr. Khoshgazaran's related opinion that a delay of about a  
 4 month is normal for this type of project is not helpful because it does not  
 5 address the issues in dispute in this litigation.

6 ***Fourth***, Dr. Khoshgazaran's opinion that Artissimo caused  
 7 Neofonie's inability to complete the project should be excluded because it  
 8 is a mere summary of the documentary evidence in this case (presented in a  
 9 light favorable to Neofonie) and does not require expertise.

10 ***Fifth***, Neofonie should not be able to present *any* opinion of Dr.  
 11 Khoshgazaran that relies upon documents that it has not produced to  
 12 Artissimo. Neofonie has failed to produce *any* documents in response to  
 13 Artissimo's Second Set of Requests for Production, which target the  
 14 documents that its proposed expert relies upon. Unless Neofonie  
 15 immediately remedies this error by producing the documents, Neofonie  
 16 should not be permitted to rely upon those documents at trial or to  
 17 introduce testimony that relies upon such documents.

18 The following exhibits are attached to this Motion:

- 19 • Exhibit A – the Expert Report of Ali Khoshgazaran, Ph.D
- 20 • Exhibit B – the Phase II Agreement executed on or about
- 21 May 23, 2018
- 22 • Exhibit C – Artissimo's Second Set of Requests for
- 23 Production of Documents and Things
- 24 • Exhibit D – Neofonie's Responses to Artissimo's Second
- 25 Set of Requests for Production of Documents and Things
- 26 • Exhibit E – Declaration of Kimberly M. Ingram

27 This motion is made following the conference of counsel pursuant to  
 28 L.R. 7-3 which took place on December 10, 2018. Pursuant to L.R. 5-

1 4.4.1, Artissimo attaches to this motion a proposed order granting its  
2 motion to exclude the proposed expert testimony.

3 For the reasons stated above and in the papers filed herewith,  
4 Artissimo respectfully requests that the Court exclude, or substantially  
5 limit, the testimony of Dr. Khoshgazaran.

6  
7 Dated: December 17, 2018

8  
9 Respectfully submitted,

10  
11 BY: /s/ Peter C. Sales

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**CERTIFICATE OF SERVICE**

I, Kimberly M. Ingram, do hereby certify that on this 17th day of December, 2018, a true and correct copy of the foregoing document is being forwarded to the individual listed below in the manner indicated:

**Via CM/ECF System**

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/s/ Kimberly M. Ingram  
Kimberly M. Ingram, Esq.